

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Charles W. Penland, Sr.,

Plaintiff,

vs.

City of Greer, South Carolina; Kenneth  
Bobo, Affiant; and Mayor, City of Greer,

Defendants.

C.A. No. 6:07-3204-HMH

**OPINION & ORDER**

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit.

The Plaintiff filed the instant case on September 24, 2007, alleging that Defendant Kenneth Bobo gave false information to a Spartanburg County judge to obtain an arrest warrant against the Plaintiff. This case was originally assigned to United States District Judge Henry F. Floyd, Jr. On October 26, 2007, Magistrate Judge William M. Catoe entered a Report and Recommendation recommending dismissing the case without prejudice. The Plaintiff filed objections to the Report and Recommendation on November 5, 2007.

On the same date, Judge Floyd entered an order adopting the Report and Recommendation of the Magistrate Judge and dismissing the case without prejudice and without issuance and service of process. (“November Order”). Judgment was entered on November 6, 2008.

The Plaintiff filed a notice of appeal of the November Order on November 20, 2007.<sup>1</sup> The Fourth Circuit remanded the instant case on July 11, 2008, for further proceedings without

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<sup>1</sup> See Houston v. Lack, 487 U.S. 266 (1988).

making any substantive ruling on the Plaintiff's appeal. On July 22, 2008, the case was re-assigned to United States District Judge Henry M. Herlong, Jr. The Fourth Circuit's mandate issued on August 1, 2008.

After review of the Report and Recommendation and the November Order, and for the reasons set forth therein, the court agrees with Judge Floyd's November Order adopting the Report and Recommendation of the Magistrate Judge and dismissing the instant case without prejudice and without issuance and service of process.

It is therefore

**ORDERED** that the Plaintiff's complaint is dismissed without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
United States District Judge

Greenville, South Carolina  
August 11, 2008

#### **NOTICE OF RIGHT TO APPEAL**

The Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.